

## Campbell, Rich

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**From:** Campbell, Rich  
**Sent:** Tuesday, December 24, 2013 9:36 AM  
**To:** Busterud, Gretchen  
**Subject:** FW: Rosemont 6 Jan Meet at 722 JP or call-in at 4pm eastern: 202-395-6392 passcode: 883 6608#

**Importance:** High

Not sure if you saw this, but this is what we will be talking about with CEQ on the 6<sup>th</sup>.

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**From:** Greczmiel, Horst [mailto:Horst\_Greczmiel@ceq.eop.gov]  
**Sent:** Friday, December 20, 2013 12:47 PM  
**To:** Hattenbach, Steve - OGC; Nitta, Kendra; HENDERSON, PAMELA A. - OGC; harvey.blank@sol.doi.gov; elizabeth.carls@sol.doi.gov; john.steiger@sol.doi.gov; John Gaudio; Campbell, Rich; Marshall, Tom; Hagler, Tom; Bomarplan; Guadagno, Tony  
**Cc:** Patel, Manisha; Guzy, Gary S.  
**Subject:** Rosemont 6 Jan Meet at 722 JP or call-in at 4pm eastern: 202-395-6392 passcode: 883 6608#  
**Importance:** High

Prior to our meeting/call please be sure to inform your agency counsel (not just staff legal counsel) on the current status so that they are not surprised by **our conversation on the 6<sup>th</sup>** which will inform the broader group's mitigation discussion on the 10<sup>th</sup>.

As soon as possible, but **no later than Tuesday the 24<sup>th</sup>**, let me know whether there are additional points that need to be articulated for further discussion – then **by the 3d provide me with any further clarifying notes** on the synopsis.

Thank you all and happy holidays, Horst

The legal review synopsis follows:

The broad points:

- General consensus that disclosure and characterization of reasonably foreseeable effects (including indirect and cumulative ) the occur off USFS managed lands and resources is appropriate;
- Disclosure and characterization of any voluntary mitigation measures offered by the applicant is appropriate;
- Articulating the limit and basis of USFS ability to require or enforce mitigation is appropriate;
- Distinguishing the role/scope of the USFS Mine Plan of Operations vs. FWS BO vs ACOE 404 permit vs AZ permits is appropriate; and
- Description of monitoring – voluntary and required – and who is imposing the requirement is appropriate.

More specifically,

- Staff legal counsels agree that the Forest Service authority to mitigate impacts extends to surface resources on National Forest System Lands, including the watershed.
- EPA has expressed a desire for one or more agencies to impose additional mitigation requirements on Rosemont to address what it views as a sustained, significant reduction in the quantity (and therefore quality) of surface and groundwater and related habitat in sensitive waters, including perennial Outstanding Arizona Waters (OAWs) located on State Land, and in perennial high value waters in the nearby BLM-administered Las Cienegas NCA.
- The Forest Service approval of Rosemont's plan of operation must allow for 'reasonably incidental' use in accord with 30 USC 612. (see Havasupai v. U.S.) and Rosemont much comply with federal and state law (see California Coastal Comm'n v. Granite Rock Co.). Operations plans typically take into account accepted best industry

practice and a reasonable sequencing of mineral activities that are 'reasonably incident' to the proposed stage of operations.

- Arizona Department of Environmental Quality (ADEQ) is the agency entitled to determine water quality effects when issuing its CWA 401 certification has indicated the preferred alternative will meet water quality standards and that Rosemont will likely receive a 401 certification.
- For further discussion are: (1) gaining consensus of counsel wherever possible; and (2) determining whether the fact that adverse impacts on the CNF have consequences beyond the boundary of the CNF allows for an opportunity wherein these impacts could be mitigated.

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